



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5074-99
7 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

Although the Board was very appreciative of your long and faithful service in the Navy, it was unable to accept your contention to the effect that "fraud, misrepresentation, or other misconduct" prevented you from applying for limited duty prior to your placement on the Temporary Disability Retired List in 1995. In this regard, it noted that you signed a Disability Counseling Checklist which provides, at paragraph 3(f), that you had been advised of the option to conditionally accept the findings of the Record Review Panel (RRP) contingent on being granted limited duty. In addition, it noted that both you and your former JAG counsel misinterpreted the provisions of paragraph 4(c) of the RRP Findings Counseling Sheet you completed on 17 January 1995. That paragraph was properly lined-out by your enlisted disability counselor because a signature was required only in those cases where the service member had completed 16 or more years of service and elected to demand a formal hearing without requesting L-5 status. As you accepted the findings of the RRP, and waived your right to demand a formal hearing, the entry in paragraph 4(c) was not applicable to you.

In addition to the foregoing, the Board concluded that had you submitted a request for

continuation on active duty until such time as you completed 20 years of active duty service, it is unlikely that the request would have been granted. In this regard, it noted that you had failed a seven month trial of limited duty in 1994, during which you required repeat cardiac catheterization and percutaneous transluminal coronary angioplasties because of accelerated anginal symptoms and re-stenosis of blood vessels. In addition, it does not appear that you met applicable weight standards at that time.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director